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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/729,845      | 12/08/2003  | Seann Pavlik         | 4442-13             | 8305             |

23117 7590 10/17/2005

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| EXAMINER |
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NGUYEN, DINH Q

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| ART UNIT | PAPER NUMBER |
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3752

DATE MAILED: 10/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/729,845

Applicant(s)

PAVLIK, SEANN

Examiner

Dinh Q. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 5, 6, 14, 15 and 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-13 and 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/26/04</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Claims 5, 6, 14, 15, 19-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/29/05.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 8 recites the limitation "said support structure" in line 5. There is insufficient antecedent basis for this limitation in the claim.

4. For the purpose of this Office action, the claims will be examined as best understood by the examiner

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 8-13, 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lockwood.

The statement of intended use carries no patentable weight.

Lockwood discloses an extendable misting apparatus comprising: a housing 11/26 having a recess 29/30 surrounded by a radial flange 34, a hydraulic fitting 17, a

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bearing block 33, a hollow piston rod 53, a misting head 151/152 with at least one nozzle 164, a spring 119 located in a chamber 14, o-ring seal 62, a concealed cover plate 12, a piston 52/56, an exterior visible surface 3 that engaging the back side of flange 34 (see figure 2)

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3, 4, 7-11, 13, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keely in view of Galvis.

Keely teaches all the limitations of the claims except for a retracted spring. However, Galvis discloses an extendable misting apparatus with a retracted spring 42. Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Keely with a retracted spring as suggested by Galvis. Doing so would provide an effective way to retracting a misting head.

With respect to claims 7 and 16, to have misting nozzles arranged at 90<sup>0</sup> intervals is an obvious matter of design choice to a person of ordinary skill in the art.

With respect to claim 9, it is an obvious matter of design choice to a person of ordinary skill in the art to configure the apparatus of Keely in view of Galvis for using in an outdoor ceiling.

9. Claim 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keely in view of Galvis as applied to claims 1, 3, 4, 7-11, 13, 16-18 above, and further in view of Ash.

Keely in view of Galvis teaches all the limitations of the claims except for an o-ring in the bearing block. However, Ash discloses an extendable misting apparatus with a housing 11, a bearing block with o-ring 16 (see figure 1). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Keely and Galvis with an o-ring as suggested by Ash. Doing so would provide sealing for the misting device.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to show the art with respect to an extendable misting apparatus: Truedson, and Cox.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dinh Q. Nguyen  
Primary Examiner  
Art Unit 3752

dqn